

Highlights of 2006 State Chaptered Legislation

The legislation noted below is a compendium of many, but not all of the legislation that may have an impact on financial institutions. Copies of these enrolled bills may be found at <http://www.leginfo.ca.gov/bilinfo.html>

AB 618 (Cogdill). Chapter 705, Statutes of 2006. Crime. The California Right to Financial Privacy Act ("Act")(Government Code section 7460 et seq.) was established in 1976 to clarify and protect the confidential relationship between financial institutions and their customers and to balance a citizens right to privacy with the governmental interest in obtaining information for specific purposes and by specific procedures. The Act provides that when any police or sheriff's department or district attorney in this state certifies to a financial institution in writing that a crime report has been filed which involves the use of drafts, checks, or other orders drawn upon a financial institution, with respect to a customers account, the financial institution shall provide specific information about the account.

This bill amends the Act to:

- Add access cards to the list of items used to commit an alleged fraudulent act;
- Add surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine or from within the financial institution for the dates on which illegal acts involving the account were alleged to have occurred to the list of items obtainable by police or sheriff's department or district attorney;
- Provide that nothing requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording; and
- Provide that nothing affects the existing civil immunities as provided in Section 47 of the Civil Code.

AB 2011 (Vargas). Chapter 459, Statutes of 2006. Local Agency Investments. This bill will allow a local agency to invest in multiple certificates of deposit using a deposit placement service to assist in the placement of the certificates of deposit.

This bill adds section 53601.8 to the Government Code to provide that a local agency may invest, at its discretion, a portion of its surplus funds in certificates of deposit at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit, provided that the purchase of certificates of deposit, pursuant to this section and Government Code sections 53635.8, and subdivision (h) of 53601, do not exceed 30 percent of the agency's funds that may be invested for this purpose.

The following conditions apply to all certificates of deposit that are issued to a local agency through a placement service:

- The local agency shall choose a nationally or state chartered commercial bank, savings bank, savings and loan association or credit union in this state, which shall be known as the “selected” depository institution;
- The selected depository institution may submit the funds to a private sector entity that assists in the placement of certificates of deposit with one or more commercial banks, savings bank, savings and loan associations, or credit unions that are located in the United States, for the local agency's account;
- The full amount of the principal, and the interest that may be accrued during the maximum term of each certificate of deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
- The selected depository institution shall serve as a custodian for each certificate of deposit that is issued with the placement service for the local agency's account;
- At the same time the local agency's funds are deposited and the certificates of deposit are issued, the selected depository institution shall receive an amount of deposits from other commercial banks, savings banks, savings and loan associations, or credit unions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution for investment;
- A local agency may not invest surplus funds with a selected depository institution for placement as certificates of deposit pursuant to this section on or after January 1, 2012, but those funds invested pursuant to this section before January 1, 2012, may remain invested in certificates of deposit issued through a private sector entity for the full term of each certificate of deposit; and
- Notwithstanding the above provisions, no credit union may act as a selected depository institution under this section or section 53635.8 unless both of the following conditions are satisfied: (1) The credit union offers federal depository insurance through the National Credit Union Administration, and (2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally-insured credit unions in one or more certificate of deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

AB 2347 (Harman). Chapter 569, Statutes of 2006. Trusts: Distribution. In 2000 California adopted the Uniform Principal and Income Act (“UPIA”) in an effort to update the California Probate Code in response to modern developments in estate planning and the increased use of trusts either in conjunction with wills or will substitutes. This bill makes technical and conforming changes to correct drafting

problems and oversights that have become apparent as trust and estate attorneys have attempted to implement the law, including:

Uniformity Between Distribution under Wills and Trusts: As drafted, the UPIA, did not expressly provide that specific and general gifts would carry and distribute income in the same manner as specific and general devises under a will. This bill corrects the oversight by referencing the relevant Probate Code sections governing specific and general devises under a will.

Modification of the Existing "90/10" Rule as Applied to Payments from an IRA: The bill rewrites Probate Code section 16361 in order to modify the existing "90/10" default rule concerning what portion of a payment to a trust should go to principal and what portion should go to income. As settlors increasingly name a trust as the beneficiary of an individual retirement account (IRA) account, the 90/10 rule has created unanticipated inequities. Under Internal Revenue Code Section 643, upon the death of one spouse, IRA payments are typically calculated according to the life expectancy of the surviving spouse. If, at the time of the settlor's death, the surviving spouse has a life expectancy of another 20 years, the annual payment to the surviving spouse would be 1/20 of the total value of the IRA. However, where the trust is the beneficiary of the IRA, and the surviving spouse is the income beneficiary of the trust, application of 90/10 rule means that the annual payment to the spouse will be only 10 percent of the 1/20 payment to the trust. The bill corrects this unanticipated problem by providing that the entire annual distribution from an IRA should go to the trust income, so long as the distribution did not exceed 4% of the total value of the IRA.

Grandfathering Provisions: Existing law provides default rules for allocating trust receipts from mineral, timber, or other natural resource interests as to the proportion that should go to principal and income. The Uniform Act which provided the model for California's UPIA included grandfathering provisions that allowed the trustee of a trust holding any such interest before the date of enactment to continue to use any reasonable allocation method previously used. These standard provisions were omitted from California's UPIA.

Default Rules for Prioritizing Sources of Distributions: This bill adds default ordering rules for cases in which a particular ordering rule is not provided by the instrument, a court order, or other applicable law. The ordering principle conforms to the general principle that the tax burden, unless otherwise provided by the trust instrument, should be borne by the beneficiary rather than the trust estate.

AB 2711 (Parra). Chapter 361, Statutes of 2006. Forms: Payment Instruments and Travelers Checks. This bill amends the Payment Instrument and Travelers Checks Laws to repeal the provisions requiring prior Department approval for any payment instrument or travelers check forms, and instead requires only new licensees to file a certified copy of their payment instrument or travelers check form with the commissioner.

The bill also amends Financial Code section 1865 to provide that no licensee shall issue any form of traveler's check for sale in this state unless:

- The traveler's check clearly identifies the licensee as the issuer of the traveler's check;
- The traveler's check is not misleading in any material respect; and
- The traveler's check complies with all applicable laws.

SB 1116 (Scott). Chapter 490, Statutes of 2006.

SB 1550 (Figueroa). Chapter 491, Statutes of 2006.

SB 1716 (Bowen). Chapter 492, Statutes of 2006.

AB 1363 (Jones). Chapter 493, Statutes of 2006.

Licensing of Professional Fiduciaries

SB 1550 enacts the Professional Fiduciaries Act, which creates a regulatory scheme for the licensure and regulation of professional fiduciaries, including the creation of the Professional Fiduciaries Bureau in the Department of Consumer Affairs. On and after July 1, 2008, the act will require a person acting or holding himself or herself out as a professional fiduciary to be licensed. Under the bill, the definition of professional fiduciary does not include a trust company, an FDIC insured institution, or its holding companies, subsidiaries, or affiliates, or a person employed by these entities or who is acting in the course and scope of that employment. The bill would also make inoperative, as of July 1, 2008, the provisions of the Probate Code that relate to the registration of private professional conservators and guardians.

Conservatorships/Guardianships

SB 1116, SB 1716 and AB 1363 provide substantial reforms concerning conservatorships and guardianships, including, among many things:

- Requires the Judicial Council to develop educational programs for non-licensed conservators and guardians, establish qualifications and educational requirements for any court-employed staff attorney, examiner and investigator, require educational courses for same, including probate judges, and requires a report to the Legislature regarding a study measuring court effectiveness in conservatorship cases;
- Requires a review of conservatorships at a noticed hearing, and imposes new requirements governing the accounting;
- Imposes new duties on court investigators;
- Prohibits the compensation of a guardian or conservator from the estate for costs or fees incurred in unsuccessfully opposing a petition;
- Specifies the circumstances under which a guardian or conservator that is a trust company is required to obtain authorization of a court prior to exercising its powers;
- Revises and recasts provisions to permit a guardian or conservator to select the least restrictive appropriate residence of a conservatee or guardian, and require a presumption that the least restrictive appropriate residence for the conservatee is the personal residence of that conservatee, except if proven otherwise at a hearing by a preponderance of the evidence;

- Revises provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal residence, as specified;
- Authorizes the court, on and after July 1, 2007, to take appropriate action, including, but not limited to, ordering a review of the conservatorship on its own motion or upon request by any interested person; and
- Requires on and after July 1, 2007, a court investigator, in determining whether the conservator is acting in the best interest of the conservatee, to include an examination of the conservatees' placement, quality of care, and finances.

SB 1609 (Simitian). Chapter 202, Statutes of 2006. Reverse Mortgages.

This bill:

- Prohibits a lender from requiring the purchase of an annuity as a condition for obtaining a reverse mortgage loan;
- Prohibits a reverse mortgage lender or a broker arranging a reverse mortgage loan from offering an annuity to the borrower or referring the borrower to anyone for the purchase of an annuity prior to the closing of the loan or before the expiration of the borrower's right to rescind;
- Requires a lender to refer a prospective borrower to a housing counseling agency for counseling on the appropriateness of a reverse mortgage prior to accepting such reverse mortgage application;
- Requires the applicant to attend that counseling and obtain a certification that the counseling class was taken;
- Requires contracts for reverse mortgages to be delivered to the party, prior to execution of the contract, a translation in the language in which it was negotiated (Spanish, Chinese, Tagalog, Vietnamese, or Korean); and
- Makes changes to the disclosure notice provided to an applicant for a reverse mortgage.

SB 1699 (Bowen). Chapter 682, Statutes of 2006. Financial transactions: privacy.

This bill would prohibit the printing of more than five digits of a credit or debit card account number on any receipt retained by a person/business who accepts a credit or debit card from a customer to transact a purchase. The bill applies only to receipts that include a credit or debit card account number that is electronically printed, and does not apply to transactions in which the recording of the person's credit or debit card account number is by handwriting or by an imprint or copy of the credit or debit card. The provisions of the bill will become operative on January 1, 2009.